AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 51 of 2013

- The New India Assurance Co.Ltd. Jagdalpur, Thru- Divisional Manager, New India Assurance Co. Ltd., 2nd Floor, Rama Trade Centre, Bus Stand Road, Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Guharam, S/o Budharu Ram Yadav Aged About 46 Years
2. Uma Bai W/o Guha Ram Yadav Aged About 42 Years
3. Mohit S/o Guha Ram Yadav Aged About 14 Years Minor
4. Ku. Sumeswari Bai D/o Guha Ram Yadav Aged About 14 Years Minor

   Respondents- 3 and 4 Thru- Father Guha Ram Yadav

   All R/o Gram- Janwartala, Thana- Gurur, Distt. Durg C.G., District : Durg, Chhattisgarh
5. Johrit Ram S/o Veerbhan Sahu Aged About 50 Years R/o Janwartala, Thana- Gurur, District : Durg, Chhattisgarh

---- Respondents

For Appellant	:	Shri Anand Gupta, Advocate
For Respondents-1 to 4	:	Ms Upasana Mehta, Advocate on behalf of Shri Dharmesh Shrivastava, Advocate
For Respondent- 5	:	Shri Kunal Das, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

30.01.2019

1. Appellant/Insurance Company has challenged the impugned award dated 11.09.2012 passed by Additional Motor Accident Claims Tribunal, Kondagaon in Claim Case No.50 of 2012 whereby learned Claims Tribunal awarded a sum of Rs.50,000/- towards 'no fault' liability in an application filed under Section 163-A of Motor Vehicles Act, 1988 (for short, 'the Act') and dismissed the claim on the ground that the deceased himself was negligent in the accident and therefore, no compensation would be awarded.

2. Brief facts for disposal of this appeal are that on 02.03.2009 Neelkamal @ Neeluram Yadav (hereafter referred to as 'deceased') was driving tractor bearing No.CG-4D-1698 (hereafter referred to as 'offending vehicle') and returning to Vishrampuri. At that relevant time, the tractor met with an accident and turned turtle. In the accident, deceased came under tractor and succumbed to the injuries sustained by him. On account of aforementioned untimely death of deceased, claimants who are his parents and siblings filed claim application claiming compensation of Rs.12,06,000/- mentioning therein that all of them are dependants on deceased.

3. Respondent- 5, owner of the offending vehicle submitted reply to the claim application admitting pleadings therein with respect to the manner the accident took place. He further admitted the contents of para-3 of the pleading wherein it has been pleaded that at the time of accident, deceased was driving the tractor, owned by him. He denied other pleading regarding income of the deceased and dependency of the claimants on deceased.

4. Appellant-Insurance Company submitted that at the time of accident, offending vehicle was being driven in violation of conditions of Insurance Policy and further it was pleaded that accident occurred due to negligence of driver himself.

5. Learned Claims Tribunal on the basis of pleadings and evidence available on record arrived at a conclusion that the accident took place due to negligence of driver of the offending vehicle himself, therefore,

claimants are not entitled for any amount of compensation under Section 163A of the Act but awarded a sum of Rs.50,000/- towards 'no fault' liability. This award was challenged by the Insurance Company on the ground that when once the application under Section 163A of the Act has been filed, then learned Claims Tribunal could not have awarded any amount towards 'no fault' liability under provision of 140 of the Act. Insurance Company further submits that any amount of award under Sections 163A and 140 of the Act are one and the same and the claimants have to choose either of these two provisions to file claim application therefore, the impugned award passed by learned Claims Tribunal is not sustainable.

6. Per contra learned counsel for respondents- 1 to 4, claimants submitted that they have also filed cross appeal challenging the impugned award passed by learned Claims Tribunal on the ground that Claims Tribunal committed an error in dismissing their claim application by holding that deceased himself was negligent due to which accident took place and therefore, the claimants are not entitled for any amount of compensation. She further argued that under provision of Section 163A of the Act the Tribunal is not required to consider the negligence on the part of driver of the offending vehicle. But on the application being filed under provision of 163A of Act, the Tribunal has to assess the compensation on the basis of structural formula as provided under Schedule.

7. Learned counsel appearing for respondent- 5, owner of the offending vehicle submits that on the date of accident the deceased was

employed as driver but denied the income as pleaded in the claim application and dependency of the claimants.

8. I have heard learned counsel for the parties and perused the records.

9. For appreciating the arguments raised on behalf of the parties it would be beneficial to glance the provisions under Section 163A and B of the Act, that are reproduced herein below:

> "[163A. Special provisions as to payment of compensation on structured formula basis.—
>
> (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).
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> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
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> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.]
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> 163B. Option to file claim in certain cases— Where a person is entitled to claim compensation under Section 140 and Section 163A, he shall file the claim under either of the said sections and not under both."

10. A bare reading of Section 163B shows that the claimants seeking compensation under provisions of the Act can file their claim application either under section 163A or 140 of the Act but it would not be maintainable under both the provisions. Thus the aforementioned provision makes it amply clear that once an application under Section 163A is under consideration before learned Claims Tribunal, then it cannot award any amount of compensation under 'no fault liability', which is provided under Section 140 of the Act.

11. As discussed above, in the considered opinion of this Court, the amount of Rs.50,000/- awarded by learned Claims Tribunal towards 'no fault' liability is not sustainable and it is hereby set aside.

12. Next question arises for consideration of this Court is whether learned Claims Tribunal could have dismissed the claim application holding that the deceased, driver of offending vehicle himself was negligent for the accident.

13. Sub-Section 2 of Section 163A specifically provides that it is not required for the claimants to establish death or permanent disability occurred due to wrongful act or negligence or default of owner of the vehicle or vehicles or any other person. It means that when claim application under Section 163A is filed by the claimants, it is to be considered strictly under provisions of Section 163A of the Act and Schedule 2 framed thereunder for calculating the amount of compensation to be awarded to the claimants.

14. The applicability of provisions of 163A of the Act has been considered by Hon'ble Apex Court in the matter of **United India insurance Company Limited Vs Sunil Kumar and another** reported in **AIR 2017 SC 5710** and held that:

> "8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.
> 9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim. "

15. From above discussions, learned Claims Tribunal has committed an error in dismissing the application holding that the deceased himself was responsible for the accident.

16. In the case in hand undisputedly, the deceased was a paid driver. In view of the above, the findings arrived at by learned Claims

Tribunal that application under Section 163A of the Act is not maintainable is contrary to law laid down by Hon'ble Supreme Court in this regard. The finding with respect to non-entitlement of compensation to the claimants is erroneous and is liable to be set aside. The impugned award passed by learned Claims Tribunal is set aside and the matter is remitted back to it for passing award keeping in mind the law laid down by Hon'ble Supreme Court in the matter of **Sunil Kumar** (*supra*).

17. Needless to say that learned Claims Tribunal will pass the award afresh after granting opportunity of hearing to the parties.

18. Looking to the date of accident and also the date of award, it is directed that learned Claims Tribunal will make all its efforts to decide the claim application within a period of four months from the date of production of certified copy of this order.

19. Records of claim case be sent forthwith to the Claims Tribunal concerned.

20. Appeal filed by the Insurance Company and cross appeal filed by the Claimants are partly allowed.

21. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE

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